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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,501	08/04/2006	Motoki Kato	293663US8PCT	7214
22850 7590 03/23/2011 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER CRUTCHFIELD, CHRISTOPHER M				
ART UNIT 2466		PAPER NUMBER		
NOTIFICATION DATE 03/23/2011		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/588,501

**Applicant(s)**

KATO, MOTOKI

**Examiner**

Christopher Crutchfield

**Art Unit**

2466

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 08 March 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:  
a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
b) ☐ They raise the issue of new matter (see NOTE below);  
c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

/Daniel J. Ryman/  
Supervisory Patent Examiner, Art Unit 2466

/Christopher Crutchfield/  
Examiner, Art Unit 2466

Continuation of 3. NOTE: Newly presented claims 47-60 raise new issues that require further search and consideration. For example, the claims now recite the use of a common identifier for the entire stream and second identifier for distinguishing the base and extension streams (See claim 47, Lines 5-11). Therefore, the amendments to the claims are not entered, as they require further search and consideration. .

Continuation of 11, does NOT place the application in condition for allowance because:

1. Applicant's Arguments that claims 25, 27, 37 and 42 are improperly rejected under 35 USC 101 in view of *Bilski v. Kappos* have been considered and are persuasive.

The issue at hand is are claims 25, 27, 37 and 42 directed to a practical application of an abstract idea implemented using a particular machine, so as to remove them from the scope of unpatentable subject matter as presented in *Bilski v. Kappos*? *Bilski v. Kappos* 130 S. Ct. 3218, 95 USPQ2d 1001 (2010).

Upon re-evaluating claims 25, 27, 37 and 42, the claims do provide indications that they are directed towards a practical application of an abstract idea. For example, although the claims are directed to the abstract idea of using priority information to separate streams of traffic, they are practically applied to the separation of base and extension streams in the context of a transport stream, which is a term of art with respect to MPEG encoding. Furthermore, a particular machine is implied in the performance of the specific encoding, decoding and packetizing steps, which require appropriately programmed computer hardware. Therefore, the previous rejection of claims 25, 27, 37 and 42 under 35 USC 101 has been withdrawn.

Although the rejection of claims 25, 27, 37 and 42 under 35 USC 101 is withdrawn, the claims remain rejected under 35 USC 103, as presented in the Final Office action, dated 8 December 2010, and in the response to arguments, *infra*.

2. Applicant's Arguments that claims 31 and 44 are improperly rejected under 35 USC 102(b) in view of The ISO/IEC 13818-1 standard have been considered and are persuasive.

The issue at hand is do the claims merely recite a pure data structure, such that the claimed subject matter is merely non-functional descriptive material stored on a computer readable medium or is the claimed subject matter directed to functional descriptive material? If the claims are directed to non-functional descriptive material, then they are to be assigned no patentable weight are properly rejected under 35 USC 102(b) in view of The ISO/IEC 13818-1 standard. See MPEP 2106.01.

Subject matter stored on a computer readable medium may be classified as functional or non-functional descriptive material. Non functional descriptive material is information recorded on a computer readable medium that represents mere data stored on a computer readable storage medium. Among the examples of non-functional descriptive material given in MPEP 2106.01 are music, literary works and a compilation or mere arrangement of data. The key factor in determining if material stored on a computer readable medium is functional descriptive material is does the recorded material impart functionality when employed as a computer component. For example, in *In re Lowry*, the court considered if a claim directed to a data structure stored in memory comprising a number of interrelated attribute data objects was merely "printed matter" that is given no patentable weight, and if presented in isolation, gives rise to a rejection under 35 USC 101. In *re Lowry*, 32 USPQ2d 1031, 1033 (1994). The key to the courts decision that the claimed subject matter was not "printed matter" was the fact that the application data objects represented more than merely the underlying data stored in the database, as they "depend[ed] functionally on the data content". *Id* at 1034.

Turning to the present application, claims 31 and 44 are analogous to the attribute data objects of *In re Lowry*, as the identifier information of the TS packet headers is not a part of the underlying data that is being stored, but instead functionally depends on if the underlying data belongs to the base or enhancement stream. Therefore, the rejection of claims 31 and 44 as anticipated by *he* ISO/IEC 13818-1 standard is withdrawn, as Applicant's Arguments have been found persuasive.

Although the rejection of claims 31 and 44 under 35 USC 102(b) is withdrawn, the claims remain rejected under 35 USC 103, as presented in the Final Office action, dated 8 December 2010.

3. The remainder of Applicant's Arguments are not persuasive.

With regard to Applicant's Arguments that *Yahata, et al.* is not prior art with respect to the present application, Applicant's Arguments have been considered and are not persuasive. Although foreign priority has been properly perfected under 35 USC 119(a-d), no support under 35 USC 112, 1st paragraph can be found for the subject matter presented as being taught by *Yahata, et al.*

The issue at hand is has the Applicant met the requirements to properly claim priority to Japanese Application No. 2004-030214 under 35 USC 119(a-d) and, if so, does the foreign priority document provide support under 35 USC 112, 1st paragraph, for the claimed elements put forth as being taught by the *Yahata, et al*? If it is found that the requirements of 35 USC 119(a-d) are met and support is provided for the claimed elements taught by *Yahata* then *Yahata* will not be a proper reference with respect to the present application, as the foreign priority date of 6 February 2004 predates the 35 USC 102(e) date of 7 October 2004 given to *Yahata, et al.*

Turning to the issue of whether priority to Japanese Application No. 2004-030214 under 35 USC 119(a-d) has properly been claimed, it is found that the requirements of 35 USC 119(a-d) have been met, as the application date is less than 12 months from the foreign priority date and a certified copy and translation of the foreign priority document have been provided.

Therefore, the issue becomes does Japanese Application No. 2004-030214 provide support for the claimed subject matter put fourth as being taught by Yahata, et al? Looking to the Final Office Action, dated 8 December 2010, Yahata is presented as teaching the claim element of using a priority indicator to de-multiplex the base and enhancement layers (See, for example, pages 15-18). Turning to Japanese Application No. 2004-030214, no mention is made of using a priority indicator for de-multiplexing base and enhancement layers. Therefore, the claimed subject matter taught by Yahata was not disclosed by Japanese Application No. 2004-030214 in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention and is not entitled to the benefit of the foreign priority date of 6 February 2004. Therefore, the rejection of the present application in view of Yahata is maintained, as the 8 November 2004 application date of the present application fails to predate the 102(e) date of 7 October 2004 given to Yahata.

With regard to Applicant's Arguments that the recited prior art fails to disclose the assigning of two PIDs to each of the base stream and the extension stream, as taught by new claims 47-60, Applicant's Arguments have not been considered as new claims 47-60 raise new issues requiring further search and consideration, as noted, *supra*.